Transfer

COA# 464624-II Retain

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
May 12, 2014, 8:34 am
BY RONALD R. CARPENTER
CLERK

No. 88759-4

RECEIVED BY E-MAIL

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

ARTHUR WEST
appellant,
Vs.
STATE OF WASHINGTON, et al
respondents

APPELLANT WEST'S REPLY BRIEF

On appeal from the rulings of
the Honorable Judges Sutton and Price

Arthur West
120 State Ave N.E. #1497
Olympia, Washington, 98501

TABLE OF AUTHORITIES

STATUTES

Constitution of the State of Washington

U. S. Constitution

ARTICLES

ARGUMENT

This is an appeal of an Order dismissing action for an injunction and a declaratory ruling in regard to I-502, an unconstitutional initiative that was passed by the voters in November of 2012.

Respondents have failed to deny that I-502, as passed, authorized unconstitutional blood draws in violation of the precedent of Missouri v. Mcneely.

In addition, the interpretation of the Uniform Declaratory Judgments Act that the defendants propose is manifestly at odds with the intent of the National Conference of Commissioners on Uniform State Laws.

Appellant West alleges that the Trial Court erred in dismissing the case for lack of justiciability when appellant had demonstrated that he was in the zone of interests protected by the State Constitution and when he had demonstrated clear significant adverse impact

from the enactment of I-502, and when such an order was in any event, contrary to the manifest intent of the Uniform Declaratory Judgments Act, and the Ruling in VASAPV.

I THE STATE SEEKS TO UNDERMINE THE UNIFORM APPLICATION OF THE UNIFORM DECLARATORY JUDGMENTS ACT TO EVISCERATE ITS REMEDIAL INTENT

The State's arguments in this case are contrary to the clear intent of the drafters of the Uniform Declaratory Judgments Act, which was adopted virtually verbatim by this State in order to further the goal of uniformly reforming the "ancient rule of jurisdiction" that "that until a party has been hurt, and has suffered loss, he has no standing in court."

As the Commissioners noted..." The Declaratory Judgment allows parties who are uncertain as to their rights and duties, to ask a final ruling from the court as to the legal effect of an act before they have

progressed with it to the point where any one has been injured."

As is apparent from the Uniform Declaratory Judgments Act, as drafted by the National Conference of Commissioners on Uniform State Laws, and "approved and recommended for enactment in all the states" in August of 1922[1], (with a prefatory note), the concept that the State seeks to ague in this case is clearly at odds with the manifest intent of the Uniform Declaratory Judgments Act.

Uniformity of interpretation of the intent of the drafters of the Uniform Declaratory Judgments Act is not merely a semantic or metaphysical tautology, but a fundamental and necessary prerequisite to effectuate the intent of the drafters. As the commissioners noted...

---

[1] See Appendix I, a true and correct copy of the NCCUSL's 1922 Uniform Declaratory Judgments Act

"The highest function of the law is the preservation of peace. The State serves such purpose poorly...when it delays a matter of the interpretation of a statute until it involves a fight for liberty."

The intent of the Commissioners is set forth more fully below, with minor redactions, as the appellant can conceive of no more compelling arguments than those originally conceived by the Commissioners in 1922.

"The Declaratory Judgment is a big, forward step in administrative justice. Its benefits will not be confined to any class or portion of society. Every citizen of the State will enjoy and profit by its good offices. Accordingly, the effort to enact it as a part of the jurisprudence of a state can involve no conflict of political parties, no division of industrial interests, and no clash of social forces.

The present system of court procedure has in certain respects, become antiquated. It holds its place

in the administration of justice largely on account of a tradition that those things which are ancient must be good. As a matter of fact, the practice of cases in court has stood still for many years while business and social affairs have been progressing.

The result has been that a gulf exists between the judicial process and the community interest that it is supposed to serve; and into this gulf have been dropped a great many possibilities. For any one to think that the administration of the law prevailing centuries ago is adequate for the needs of the present, is quite as absurd as to indulge the idea that the clothes of the boy can be worn in comfort by the grown man.

Today our courts are operated largely on the fundamental idea of giving to an injured party reparation and redress. Certainly it is still a primary rule of jurisdiction that until a party has been hurt, and has suffered loss, he has no standing in court.

This ancient rule of jurisdiction has long been found too narrow to meet the requirements of modern social, industrial and economic conditions. Men ought not be forced to the necessity of encountering damage or assuming ruinous responsibilities before they are permitted to seek and secure a court decision as to their rights and duties.

Such a scheme puts a premium upon delinquency and penalties altogether out of harmony with a proper conception of law, order and justice. It should be the primary purpose of the State to save its citizens from injury, debt, damage and penalties; and to this end the highest function of the court ought to be to decide, when possible, the controversies of parties before any loss has been suffered or any offense committed.

The Declaratory Judgment aims at abolishing the rule which limits the work of the courts to a decision which enforces a claim or assesses damage or

determines punishment. The Declaratory Judgment allows parties who are uncertain as to their rights and duties, to ask a final ruling from the court as to the legal effect of an act before they have progressed with it to the point where any one has been injured.

The Declaratory Judgment principle is of Roman origin. It spread over the principal part of continental Europe long before the American colonies became the United States. It has been in effect in Scotland for over three centuries. In England it has existed since 1858 with ever-broadening scope and increased influence. It is used in the greater part of the British colonies and dominions, including Canada.

Experience has demonstrated in the countries where the Declaratory Judgment procedure has been adopted that its use has resulted in a great saving in actual litigation, thereby anticipating those long, bitter and expensive controversies that follow highly litigated

cases for breach of contracts and denial of rights, which can be avoided by the adoption and use of the Declaratory Judgment procedure.

The Declaratory Judgment Act is a development of the old Roman law of procedure, which allowed a judge to decide in a preliminary way certain questions of law and fact which the parties themselves by agreement or the magistrate at the request of either one of the parties might submit to the judge for decision. The decision had the effect of settling the law as it then stood.

The exercise of the Declaratory Judgment procedure constantly grew and in the middle ages the law had so developed that the questions of status and property rights connected therewith and of the validity or invalidity of wills or other legal instruments constituted the principal subjects of declaratory actions.

In an action for a Declaratory Judgment the plaintiff asks a declaration that the defendant has no right as opposed to the plaintiff's privilege; that is to say that the plaintiff is under no duty to the defendant, or that the plaintiff is under an immunity from any power of, or control by the defendant. This, or course, was a violent departure from the Common Law conception of the duty of courts. It was only when some wrong had been perpetrated that the Common Law courts took any judicial notice of the fact. The scope of their judicial functions before the passage of the Declaratory Acts was entirely curative. The purpose of this Act is really to prevent litigation.

Under the Act any party to a contract, for instance, may have a judicial construction of the same even before a breach thereof, without undue expense and at a time when the effect of an adverse decision is not likely to prove disastrous. In truth, the Declaratory

Judgments Act is nothing more than a bill to make it possible for a citizen to ascertain what are his rights and what are the rights of others before taking steps which might involve him in costly litigation. The purpose of the Act and its effect is to enable the citizen to procure from a court guidance which will keep him out of trouble and to procure that guidance with materially less expense than he would have to incur if he should wait until the trouble came before having recourse to the court.

In order to have recourse to and take advantage of the Declaratory Judgment procedure it is not requisite that any wrong should have been done or any breach committed. It is to prevent and forestall such happenings by a Declaratory Judgment setting forth rights and duties for the guidance of those concerned and indicating the course to be followed, that a remedy is provided by the Act, and thus litigation is avoided.

The measure is not merely preventive, it is also interpretative. It concerns itself not only with contracts, but...with matters of governmental regulation, such as ordinances and the like,...In all such cases the Act will be found of benefit. Under the Act the courts will have power to declare rights, status and other legal relations whether or not further relief is or could be demanded and no judgment will be open to the objection that it will be declaratory. It will therefore be binding. In other words, before war is openly declared between parties the courts may decide that there is no occasion there-for. The Uniform Act permits the court to construe a contract either before or after a breach thereof.

In every State of the Union we have always had bills in chancery to construe wills, to perpetuate testimony, to determine questions of title and the removal of a cloud. The Declaratory Judgment is but

an enlargement in scope and advantage of such proceedings. There is nothing experimental in the Uniform Act. It has been tested and has proved its worth by many years of constant use in the English speaking courts as well as in the courts of some of the countries of continental Europe.

It does not take anything from the law as it exists today. Every right is preserved and will be enforced. The Declaratory Judgment only increases the court's power for good. As stated in the bill itself:

"This act is declared to be remedial; its purpose it to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered."

The Declaratory Judgment may be either affirmative or negative in form and effect; it may determine some right, privilege, power or immunity in

the plaintiff, or some duty, no-right, liability or disability in the defendant. The judgment is not based on any wrong already done or any breach committed. It is not required to be executed, as it orders nothing to be done. It simply declared rights and duties so that parties may guide themselves in the proper legal road, and, in fact, and in truth, avoid litigation.

Most men are honest...If the parties could find out their rights before acting, their action generally would conform to their rights...But every party is not and cannot be informed as to his rights as well as his duties, and, in the absence of such definite knowledge, grave losses may be, and often are, incurred. As matters stand today litigation must await that loss, and there can be no coming into court to secure a ruling as to the status of liability.

It often follows that this litigation, when at length it does come, is vindictive and expensive and

that the injurious crimination and recrimination are never forgiven or forgotten. In many cases these unfortunate results would be avoided if recourse could be had, before such loss occurred and litigation arose, to the Declaratory Judgment procedure.

The opportunities for good that thus attach to this new procedure, are so numerous as not be permit of a full list being attempted. Instances will occur to every practicing lawyer, and to such laymen as may have experienced the fearful limitations under which modern American courts labor. ...

If before injury has been inflicted, the parties could obtain a decision on questions in dispute, much of the undesirable features of present day litigation might be eliminated.

The highest function of the law is the preservation of peace. The State serves such purpose poorly...when it delays a matter of the interpretation of

a statute until it involves a fight for liberty. "A stitch in time saves nine." Nowhere can this homely adage be applied to better advantage than in court affairs. Nowhere has its application been denied except in court. The Declaratory Judgment is "a stitch in time." "

For this Court to fail to interpret the Uniform Declaratory Judgments Act in accord with the clear, cogent, and manifest intent of its drafters will reduce the administration of justice to a non-uniform, arbitrary and capricious process where parties motives and character are improperly weighed in contravention of the 1st Amendments, Article 1, section 5 of the Constitution of the State of Washington, and Article I, section 12, the privileges and immunities clause.

II THE STATE HAS FAILED TO DENY THAT I-502 AUTHORIZED UNCONSTITUTIONAL BLOOD DRAWS AND IT'S "MOST LIKELY" ARGUMENT FAILS TO MEET CR 56 STANDARDS.

The State completely fails to address the Missouri v. Mcneely arguments made by the plaintiff. No claim of mootness or any showing of the requirements necessary for post litigation cessation of illegal conduct.

As the Courts have routinely recognized. To obtain a dismissal on mootness grounds, a defendant bears a heavy burden to show that "there is no reasonable expectation that the wrong will be repeated." *United States v. W.T. Grant Co.*, 345 U.S. 629, at 633, 632, 73 S.Ct. 894, at 897, 97 L.Ed. 1303 (1953).,

Further, the defendant who discontinues the challenged conduct while proclaiming its legality is particularly unlikely to succeed in mooting a case.

Sasnett v. Litscher, 197 F.3d 290, 291-92 (7th Cir. 1999); *United States v. Laerdal Manufacturing Corporation*, 73 F.3d 852, 856 (9th Cir. 1995); *Donovan v. Cunningham*, 716 F.2d 1455, 1461-62 (5th Cir. 1983). See *Walling v. Helmerich*, 323 U.S. 37, 43 (1944).

The defendants have not even argued, much less established that the unconstitutional blood draw provisions of I-502, as enacted without proper notice under Article II, Section 19 of the Constitution of the State of Washington are moot. Further, in light of the recent ruling of this Court on I-1053, the enactment of unconstitutional statutes via the Initiative process is a circumstance that is certainly subject to repetition.

In an attempt to bolster its arguments the State has designated additional records not on file when the Commissioner of this Court Ruled on Appellant's motion to Supplement the record with additional

evidence on review, and made arguments that make this evidence far more relevant than it was previously.

These changed circumstances, support a renewed consideration of this motion, in addition to the recent (may 6th) article appended as exhibit II, which the Court can remove from the file should the motion to supplement be denied and the defendants object. However, it would be manifestly unfair and inequitable to allow one party to make arguments while robbing the other of evidence necessary to reply.

This is especially necessary when the State makes a "would likely" argument in regard to DUI enforcement (See State Brief, page 13) that manifestly fails to satisfy the requirements of CR 56.

III THE STATE FAILS TO ADDRESS THE PRIVILEGES AND IMMUNITIES DISCREPANCY INHERENT IN GRANTING AN ORGANIZATION SUCH AS THE WASHINGTON ASSOCIATION FOR SUBSTANCE ABUSE AND VIOLAENCE PREVENTION GREATER PRIVILEGES THAN AN INDIVIDUAL SUCH AS WEST

Fundamental in the requirements of the Due Process Clause of the 14th Amendment and Article I, section 12 is the policy that all entities be treated similarly.

In WASAVP This Court ruled...

> WASAVP's goal of preventing substance abuse and violence places it within the zone of interests of I–1183, which broadly impacts the State's regulation of alcohol... Second, both appellants have established injury in fact... Although WASAVP has not suffered economic loss as a result of I–1183, its goals of preventing substance abuse could reasonably be impacted by I–1183's restructuring of Washington's regulation of liquor. Washington Association for Substance Abuse & Violence Prevention v. State, 174 Wn.2d 642, (2012)

For this Court to allow entities like the Washington Association for Substance Abuse & Violence Prevention greater privileges and immunities in regard to restructuring of liquor than it affords appellant West in regard to the regulation of Marijuana would undermine the policy of these fundamental constitutional requirements.

While under Citizen's United it is true corporations are allowed to exercise rights under the 1st Amendment, to grant organizations Like the WASAVP greater rights to petition than individuals would be a manifest breach of the policy that all be treated alike, as well as the manifest intent of Article I, section 12 of the Constitution of the State of Washington that corporations like WASAVP not be granted special privileges.

> No law shall be passed granting to any citizen, class of citizens, or corporation

> other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Appellant West is entitled to the same privileges under the UDJA as the WSAVP. In this case that requires acceptance of review and reversal.

IV THIS COURT SHOULD REVIEW THE SUBSTANTIAL AND PUBLIC ISSUES PRESENTED BY THE UNCONSTITUTIONAL ENACTMENT OF I-502

This Court has recognized, the existence of public issues are sufficient to secure review in...

> "matters directly affecting the freedom of choice in the election process, see State ex rel. O'Connell v. Dubuque, 68 Wn.2d 553, 559, 413 P.2d 972 (1966) (or) whether a statute increasing the amount of excise tax was constitutional. See State ex rel. Distilled Spirits Inst., Inc. v. Kinnear, 80 Wn.2d 175, 178, 492 P.2d 1012 (1972).

As West argued in the trial Court and in the Opening Brief, I-502, by its very enactment, (in violation of the notice requirements of Article II,

section 19) has created a public controversy that transcends mere freedom of choice in the elections process or an excessive rise in excise taxes.

As the attached records from Division I of the Washington State Court of Appeals and the District Court of the District of Washington D.C. demonstrate, I-502 has created ripple effects throughout the State of Washington, nationwide, and internationally.

Clearly, the impact of, and the substantial public issues surrounding I-502 extend far beyond the mere fact that Appellant West could at any time be arrested and prosecuted for DUI based upon an arbitrary, unscientific blood limit voted in without proper notice.

By abridging the notice required under Article II section 19, I-502 directly affected the freedom of choice in the election process, in an initiative imposing substantial excise taxes. Thus, the requirements of

both O'Connel and Kinear have been met in regard to issues of public importance.

I-502 contributes to the crisis of federalism noted by professor Schwartz, undermines uniform enforcement of the uniform Controlled Substances Act and compliance with international treaties, and contributes to uncertainty in regard to the fundamental structure of our federal republic

Municipal banns directly and proximately resulting from I-502 have produced controversy and uniform enforcement issues in Kent and elsewhere.

Further, there can be no reasonable argument to deny that has had a deleterious impact on the recognized and suspect class of medical marijuana patients. All of these factors support a decision on the merits of the issues presented in this case.

CONCLUSION

The National Conference of Commissioners on Uniform State Laws recognized nearly a century ago, when they drafted the Uniform Declaratory Judgments Act that ...

> The highest function of the law is the preservation of peace. The State serves such purpose poorly...when it delays a matter of the interpretation of a statute until it involves a fight for liberty. "A stitch in time saves nine." Nowhere can this homely adage be applied to better advantage than in court affairs. Nowhere has its application been denied except in court. The Declaratory Judgment is "a stitch in time." "

This Court should rule in conformity with the intent of the National Conference of Commissioners on Uniform State Laws who drafted the Uniform Declaratory Judgments Act and accept review of the many substantial issues presented by I-502.

Respectfully submitted May 12, 2014.

ARTHUR WEST

CERTIFICATE OF SERVICE

I certify that this document has been Emailed to counsel for the respondents at their address of record on or before May12, 2014. Done May 12, 2014.

ARTHUR WEST

UNIFORM DECLARATORY JUDGMENTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

And by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

At its

CONFERENCE IN SAN FRANCISCO, CALIFORNIA
AUGUST 2-8, 1922

WITH PREFATORY NOTE

COMMITTEE ON DECLARATORY JUDGMENTS
OF COMMISSIONERS ON UNIFORM STATE LAWS 1922-1923

JAMES R. CATON, Alexandria, Virginia, *Chairman*
GEORGE A. BOURGEOIS, Atlantic City, New Jersey
T.A. HAMMOND, Atlanta, Georgia
CHARLES S. LOBINGER, Shanghai, China
D.A.G. OUZTS, Greenwood, South Carolina
EDGAR B. STEWART, Morgantown, West Virginia
BEN F. WASHER, Louisville, Kentucky
NATHAN WILLIAM MacCHESNEY, *President of the Conference*

THE UNIFORM DECLARATORY JUDGMENTS ACT: REASONS FOR ITS ADOPTION

The Declaratory Judgment is a big, forward step in administrative justice. Its benefits will not be confined to any class or portion of society. Every citizen of the State will enjoy and profit by its good offices. Accordingly, the effort to enact it as a part of the jurisprudence of a state can involve no conflict of political parties, no division of industrial interests, and no clash of social forces.

The present system of court procedure has in certain respects, become antiquated. It holds its place in the administration of justice largely on account of a tradition that those things which are ancient must be good. As a matter of fact, the practice of cases in court has stood still for many years while business and social affairs have been progressing. The result has been that a gulf exists between the judicial process and the community interest that it is supposed to serve; and into this gulf have been dropped a great many possibilities. For any one to think that the administration of the law prevailing centuries ago is adequate for the needs of the present, is quite as absurd as to indulge the idea that the clothes of the boy can be worn in comfort by the grown man.

Today our courts are operated largely on the fundamental idea of giving to an injured party reparation and redress. Certainly it is still a primary rule of jurisdiction that until a party has been hurt, and has suffered loss, he has no standing in court.

This ancient rule of jurisdiction has long been found too narrow to meet the requirements of modern social, industrial and economic conditions. Men ought not be forced to the necessity of encountering damage or assuming ruinous responsibilities before they are permitted to seek and secure a court decision as to their rights and duties. Such a scheme puts a premium upon delinquency and penalties altogether out of harmony with a proper conception of law, order and justice. It should be the primary purpose of the State to save its citizens from injury, debt, damage and penalties; and to this end the highest function of the court ought to be to decide, when possible, the controversies of parties before any loss has been suffered or any offense committed.

The Declaratory Judgment aims at abolishing the rule which limits the work of the courts to a decision which enforces a claim or assesses damage or determines punishment. The Declaratory Judgment allows parties who are uncertain as to their rights and duties, to ask a final ruling from the court as to the legal effect of an act before they have progressed with it to the point where any one has been injured.

The Declaratory Judgment principle is of Roman origin. It spread over the principal part of continental Europe long before the American colonies became the United States. It has been in effect in Scotland for over three centuries. In England it has existed since 1858 with ever-broadening scope and increased influence. It is used in the greater part of the British colonies and dominions, including Canada. Experience has demonstrated in the countries where the Declaratory Judgment procedure has been adopted that its use has resulted in a great saving in actual litigation, thereby anticipating those long, bitter and expensive controversies that follow

highly litigated cases for breach of contracts and denial of rights, which can be avoided by the adoption and use of the Declaratory Judgment procedure.

The Declaratory Judgment Act is a development of the old Roman law of procedure, which allowed a judge to decide in a preliminary way certain questions of law and fact which the parties themselves by agreement or the magistrate at the request of either one of the parties might submit to the judge for decision. The decision had the effect of settling the law as it then stood. The exercise of the Declaratory Judgment procedure constantly grew and in the middle ages the law had so developed that the questions of status and property rights connected therewith and of the validity or invalidity of wills or other legal instruments constituted the principal subjects of declaratory actions.

In an action for a Declaratory Judgment the plaintiff asks a declaration that the defendant has no right as opposed to the plaintiff's privilege; that is to say that the plaintiff is under no duty to the defendant, or that the plaintiff is under an immunity from any power of, or control by the defendant. This, or course, was a violent departure from the Common Law conception of the duty of courts. It was only when some wrong had been perpetrated that the Common Law courts took any judicial notice of the fact. The scope of their judicial functions before the passage of the Declaratory Acts was entirely curative. The purpose of this Act is really to prevent litigation. Under the Act any party to a contract, for instance, may have a judicial construction of the same even before a breach thereof, without undue expense and at a time when the effect of an adverse decision is not likely to prove disastrous. In truth, the Declaratory Judgments Act is nothing more than a bill to make it possible for a citizen to ascertain what are his rights and what are the rights of others before taking steps which might involve him in costly litigation. The purpose of the Act and its effect is to enable the citizen to procure from a court guidance which will keep him out of trouble and to procure that guidance with materially less expense than he would have to incur if he should wait until the trouble came before having recourse to the court.

In order to have recourse to and take advantage of the Declaratory Judgment procedure it is not requisite that any wrong should have been done or any breach committed. It is to prevent and forestall such happenings by a Declaratory Judgment setting forth rights and duties for the guidance of those concerned and indicating the course to be followed, that a remedy is provided by the Act, and thus litigation is avoided. The measure is not merely preventive, it is also interpretative. It concerns itself not only with contracts, but with wills and other instruments of writing, with matters of governmental regulation, such as ordinances and the like, with respect to titles to property, and particularly with the status of family relations, man and wife, parent and child, guardian and ward, and also with provisions of trust. In all such cases the Act will be found of benefit. Under the Act the courts will have power to declare rights, status and other legal relations whether or not further relief is or could be demanded and no judgment will be open to the objection that it will be declaratory. It will therefore be binding. In other words, before war is openly declared between parties the courts may decide that there is no occasion there-for. The Uniform Act permits the court to construe a contract either before or after a breach thereof.

In every State of the Union we have always had bills in chancery to construe wills, to perpetuate testimony, to determine questions of title and the removal of a cloud. The

Declaratory Judgment is but an enlargement in scope and advantage of such proceedings. There is nothing experimental in the Uniform Act. It has been tested and has proved its worth by many years of constant use in the English speaking courts as well as in the courts of some of the countries of continental Europe.

It does not take anything from the law as it exists today. Every right is preserved and will be enforced. The Declaratory Judgment only increases the court's power for good. As stated in the bill itself:

> "This act is declared to be remedial; its purpose it to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered."

The Declaratory Judgment may be either affirmative or negative in form and effect; it may determine some right, privilege, power or immunity in the plaintiff, or some duty, no-right, liability or disability in the defendant. The judgment is not based on any wrong already done or any breach committed. It is not required to be executed, as it orders nothing to be done. It simply declared rights and duties so that parties may guide themselves in the proper legal road, and, in fact, and in truth, avoid litigation.

Most men are honest. Law suits for the most part arise from honest differences of opinion between parties as to their rights, and often arise from honest differences of opinion between their counsel. If the parties could find out their rights before acting, their action generally would conform to their rights. If an attorney had means of ascertaining without waiting for a breach of a contract the rights of his client, his client would be saved loss by acting within his rights. It is to be presumed that each party to a transaction intends to proceed with ordinary honesty and circumspection. But every party is not and cannot be informed as to his rights as well as his duties, and, in the absence of such definite knowledge, grave losses may be, and often are, incurred. As matters stand today litigation must await that loss, and there can be no coming into court to secure a ruling as to the status of liability. It often follows that this litigation, when at length it does come, is vindictive and expensive and that the injurious crimination and recrimination are never forgiven or forgotten. In many cases these unfortunate results would be avoided if recourse could be had, before such loss occurred and litigation arose, to the Declaratory Judgment procedure.

The opportunities for good that thus attach to this new procedure, are so numerous as not be permit of a full list being attempted. Instances will occur to every practicing lawyer, and to such laymen as may have experienced the fearful limitations under which modern American courts labor.

In most cases each party to a transaction wishes to do right and act honestly. If at the outset of a controversy over a jural relation, a judgment could be obtained setting forth rights and duties, every one would at once abide the decision, and all hostile litigation and bad feeling would be avoided. It is only because parties are now forced to wait until money loss has been suffered or criminal penalties are involved, before they are permitted to come into court, that so many bitter contests attend proceedings in court. Out of this bitterness, resulting from property

interests or personal liability being at stake, we have the practice of cases characterized by ugly charges and counter-charges, criminations and recriminations, false witnesses and perjury. If before injury has been inflicted, the parties could obtain a decision on questions in dispute, much of the undesirable features of present day litigation might be eliminated.

The highest function of the law is the preservation of peace. The State serves such purpose poorly when it compels a citizen to wait until a difference as to the construction of a contract has developed into a struggle to secure or save valuable property; when it delays a matter of the interpretation of a statute until it involves a fight for liberty.

"A stitch in time saves nine." Nowhere can this homely adage be applied to better advantage than in court affairs. Nowhere has its application been denied except in court. The Declaratory Judgment is "a stitch in time."

AN ACT CONCERNING DECLARATORY JUDGMENTS AND DECREES AND TO MAKE UNIFORM THE LAW RELATING THERETO

Be it enacted

SECTION 1. [Scope.] Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

SECTION 2. [Power to Construe, etc.] Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

SECTION 3. [Before Breach.] A contract may be construed either before or after there has been a breach thereof.

SECTION 4. [Executor, etc.] Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate of trust, including questions of construction of wills and other writings.

SECTION 5. [Enumeration Not Exclusive.] The enumeration in Section 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

SECTION 6. [Discretionary.] The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings.

SECTION 7. [Review.] All orders, judgments and decrees under this act may be reviewed as other orders, judgments and decrees.

SECTION 8. [Supplemental Relief.] Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefore shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been

adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

SECTION 9. [Jury Trial.] When a proceeding under this Act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other devil actions in the court in which the proceeding is pending.

SECTION 10. [Costs.] In any proceeding under this act the court may make such award of costs as may seem equitable and just.

SECTION 11. [Parties.] When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of this State shall also be served with a copy of the proceeding and be entitled to be heard.

SECTION 12. [Construction.] This act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

SECTION 13. [Words, Construed.] The word "person" wherever used in this act, shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

SECTION 14. [Provisions Severable.] The several sections and provisions of this act except sections 1 and 2, are hereby declared independent and severable, and the invalidity , if any, of any part or feature thereof shall not affect or render the remainder of the act invalid or inoperative.

SECTION 15. [Uniformity of Interpretation.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

SECTION 16. [Short Title.] This act may be cited as the Uniform Declaratory Judgments Act.

SECTION 17. [Time of Taking Effect.] This act shall take effect ( ).

WASHINGTON — Josephine Drum says her daughter was "cheated out of life" when she was killed while driving to work in downtown Seattle in 2012, hit by a man in a Jeep whose blood tested positive for marijuana.

"I feel if you smoke marijuana and you have to smoke it, that you should not be able to drive under the influence," said Drum, of Stockton, Calif. "I'm 84 years old. To have lost my daughter is something hard for me to accept."

With the push to legalize marijuana surging in popularity, states want to assure the public that roads will be safe. But they face a perplexing question: How stoned is too stoned to drive?

"The answer is: Pretty damned stoned is not as dangerous as drunk," said Mark Kleiman, professor of public policy at the University of California, Los Angeles, who served as Washington state's top pot consultant.

He said Washington state has a law that's far too strict and could lead to convictions of sober drivers, with many not even knowing whether they're abiding by the law.

With no conclusive research, states are all over the map as they try to assess intoxication by measuring blood levels of THC, the main ingredient in marijuana.

There's no easy way to do it, with marijuana stored in fat cells and detectable in blood long after it's smoked or consumed, for days or weeks, depending on individual tolerance and level of use.

Washington state and Colorado, the only two states to fully legalize marijuana, have set a limit of five nanograms of active THC per milliliter of blood. In Washington state, legalization proponents included the language in the ballot initiative approved by voters in 2012.

"It appealed to the voters, but it's nonsense _ it's not a good measure

of whether somebody's impaired or not," Kleiman said. "The fact that legislatures will not do their job on this means we go through the cockamamie initiative process _ it's a lousy way to write legislation."

In California, much to Drum's disappointment, lawmakers last week rejected an even tougher standard. The state's Assembly Committee on Public Safety voted to kill a bill that would have set the limit at 2 nanograms per milliliter of blood, rejecting the pleas of police officers.

And in Arizona, the state Supreme Court last month struck down part of the state's zero-tolerance law, saying it could result in convictions of sober drivers.

Some legalization proponents ridicule the statutes as "sober DUI" laws.

"What we have to understand is that arbitrary rules or zero tolerance lead to unconstitutional policing," said Diane Goldstein of Tustin, Calif., a former police lieutenant and a member of Law Enforcement Against Prohibition, a pro-legalization group that opposes the laws.

While police can use breathalyzers to easily measure the amount of alcohol in one's bloodstream, the best way to determine marijuana intoxication is by examining a blood sample.

Last year, the U.S. Supreme Court complicated the situation for states by ruling that police must get a warrant before testing blood for a DUI.

"Drawing blood is not a roadside activity for a cop," Kleiman said. "Drawing blood is a medical procedure and you need a licensed phlebotomist. So you're not going to be able to do stoned-driving checkpoints."

Ultimately, he said, a mouth swab that uses a driver's saliva to detect the presence of marijuana may be the answer, if test results can be

used to track impairment.

Like many states, Washington has a team of "drug-recognition experts" _ 200 specially trained officers who can be called in to assist with marijuana DUIs, and whose evidence can be admissible in court.

Christine Beckwith, a DUI attorney from Tacoma, Wash., said the officers attend short courses but are not medical experts. And she said the blood draws make it harder for the state to prosecute a case, requiring a phlebotomist to give a sample to a police officer, who then sends it to a laboratory for testing.

"There's so many more steps for the admissibility of the blood tests that they're easier for the defense. . . . It passes through a lot of hands, where there's lots of room for error," she said, predicting that marijuana DUIs will be a lively issue for the courts in coming years.

Goldstein, the former cop, said states should "go back and rely on things we know work." She said that includes paying for more saturation patrols, better training for all officers to spot signs of impairment and more research so that laws are "grounded in science, not just political rhetoric."

"The problem is that science is lagging really far behind with drugs versus alcohol," Goldstein said. "We're going to have to deal with this issue, not just in California, but the nation as a whole."

In March, Colorado Democratic Rep. Jared Polis, who backs pot legalization, introduced a bill to create federal guidelines and "a single

federal standard" for driving under the influence of marijuana. He said that lawmakers should keep impaired drivers off the roads "no matter what impaired them." But he has not lined up a single co-sponsor.

In Washington state, organizers of Initiative 502, the ballot measure that legalized marijuana, decided to include the 5 nanogram standard in the language after California voters defeated a plan to legalize marijuana in 2010. A post-election survey found that public anxieties about impaired driving in the Golden State helped kill the measure in the campaign's final days.

Alison Holcomb, criminal justice director of the American Civil Liberties Union of Washington in Seattle and the lead architect of Initiative 502, said studies are needed to know whether the law will increase safety and whether unimpaired drivers wind up getting convicted.

"I don't think we have sufficient information to answer these questions, and we should try to get it," Holcomb said.

But she defended the 5 nanogram standard, saying it was backed by existing science as a reasonable guideline to measure impairment. She noted that studies using low-potency marijuana from the National Institute of Drug Abuse found that THC levels in infrequent users dropped below the limit within two to three hours of smoking marijuana, and several hours later for those who consumed it orally. A majority of heavy marijuana users dropped to the legal limit within 24 hours of their last use, she said.

Kleiman questioned whether the studies "reflect the realities of contemporary commercial pot," with much of it having higher potency levels than the government-supplied marijuana.

"Because the pharmacokinetics are unpredictable, the (law) fails the most basic test of justice in criminal law: that a person should be able to know whether he's breaking the law or not," he said.

As the debate heats up, both sides can point to competing research.

In February, researchers from Columbia University's Mailman School of Public Health reported that fatal crashes involving marijuana use had tripled over the past decade, with one of every nine drivers now involved in a deadly accident testing positive for pot.

Kevin Sabet, a former drug adviser for Obama who now heads the anti-legalization group Project SAM (Smart Approaches to Marijuana) said that pot intoxication doubles the risk of a car crash and that laws that focus on impairment "seem justified."

Legalization advocates cite statistics showing that the number of DUI fatalities has decreased slightly in both Washington state and Colorado since 2012.

Even in California, the first state to legalize medical marijuana in 1996, Goldstein said that DUIs for alcohol remain the top concern for police.

"If we had a crisis of fatality rates, law enforcement would have been screaming about this going back to 1996, but what we have is probably some of the safest roads in our nation," she said.

Kleiman of UCLA sees good news and bad news in the issue.

"The bad news is at the moment we don't have have anything sensible to do about stoned driving," he said. "The good news is that it's only a moderate-sized problem. . . . I would be nervous about over-criminalizing it."

Drum, whose daughter was killed in the Seattle crash, is angry that the driver who caused the eight-car pileup received a sentence of

only 54 months.

"I don't think it's sufficient," she said.

Drum said her daughter, 56-year-old Rosemary Tempel, worked as a nurse at a Seattle hospital for more than 30 years. She broke her neck in the accident.

"She was going to work that morning, and to have a reckless driver hit her head-on, and the way she was killed, it's something hard to take," Drum said. "I can't understand how a person that doesn't have the ability to do it safely, why they're on the streets."

Email: rhotakainen@mcclatchydc.com; Twitter: @HotakainenRob.

The Honorable John D. Bates

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

ARTHUR S. WEST, plaintiff, Vs. ERIC HOLDER, UNITED STATES DEPARTMENT OF JUSTICE, JAMES COLE, JAY INSLEE, SHARON FOSTER, STATE LIQUOR CONTROL BOARD CHAIR, defendants	Case No. 14 cv 98 JDB PLAINTIFF'S 1st AMENDED VERIFIED COMPLAINT FOR VIOLATION OF NEPA, IMPROPER FEDERAL COMMANDEERING AND DECLARATORY RELIEF

I. INTRODUCTION

1.1 This is an action for declaratory and injunctive relief in regard to a major federal action taken by the federal government by and through the Department of Justice and announced in August of 2013 to allow the State of Washington to implement a legal commercialized recreational marijuana taxation and regulation scheme under federal commandeering control. The major federal action was the result of a regular and systemic series of contacts between the federal Government in Washington D.C and Governor Inslee and the Liquor Control Board of the State of Washington, contacts which had the purposeful effect of creating an ongoing pattern of improperly commandeering State officers and institutions, rising to the level of substantial and expressive harm to the structure of federalism in violation of the 9th and 10th Amendments and the common law Anti-commandeering Doctrine established in New York v. United States, 488 U.S. 1041 (1992), and extended in Prinz v. United States, 521 U.S. 898 (1997).

1.2 Plaintiff asserts that the defendants failed not only to consider the reasonably foreseeable impacts to the urban and natural environment under NEPA, they failed to adequately consider the cumulative expressive and substantive impacts of the federal decision to

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

commandeer rather than preempt or take no action, and the resulting refusal of the federal government to afford the State of Washington its structural autonomy and independence, the constitutionally underwritten dignity of a state, the esteem which it is due as a sovereign entity, the essential attributes inhering in the State's constitutional status, and the requirement that the state of Washington be treated in a manner consistent with its status as residual sovereign and joint participant in the governance of the nation, as required by the history, practice, precedent, and the structure of the Constitution, the Anti-commandeering Doctrine, and NEPA.

1.3 Plaintiff seeks an order requiring appropriate NEPA documentation for the national policy determination(s) made by the executive branch of the federal government to commandeer rather than preempt or ignore Washington's commercial recreational marijuana legalization and taxation scheme, announced August 29, 2013 in a telephone call to the Governors of Colorado and Washington, (memorialized, in part, in a Memorandum from James Cole of the same date and as discussed in the Senate Judiciary Committee on September 4, 2014), in the form of an EIS or FONSI, and the appropriate environmental, social, economic, and cumulative impact studies, in addition to a full consideration of alternatives, including no action and federal preemption. The cumulative impacts of expressive and substantive harm to federalism stemming from the defendants systemic commandeering should also be a component of the NEPA analysis.

1.4 Further, due to the manifestly unconstitutional nature of the federal government's application of the CSA, and federalization of the implementation of I-502, in violation of (Supremacy Clause) Article 4, section 4(1) of, and the 4th, 5th 9th, 10th, and 14th Amendments to, the Constitution of the United States, as well as the defendants' violation of NEPA, a declaratory ruling is sought. This case presents an Article III case or controversy, and plaintiff is entitled to the relief sought.

II. JURISDICTION

2.1 The jurisdiction of this Court is conferred by and invoked pursuant to federal question jurisdiction under 28 U.S.C. 1331, the Administrative Procedure Act, 5 U.S.C. 702, and 704, and the National Environmental Policy Act, 42 USC 4331, et seq.

2.2 The jurisdiction of this court is also conferred by and invoked pursuant to 28 U.S.C. 1346 by virtue of the naming of an agency of the U.S. Government as defendant to this action. Ancillary or supplemental pendant party jurisdiction over the Ex Parte Young defendants Inslee

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

and Foster is also appropriate under 28 USC 1367(a) (See also *Exxon Mobil Corp. v. Allapattah Services*, 545 U.S. 546) since all claims stem from the same common nucleus of operative fact, the federal decision to commandeer the Government of the State of Washington.

2.3 Jurisdiction over defendants Inslee and Foster, dba the State of Washington and State Liquor Control Board, respectively, is also provided by the long Arm Statute of the District of Columbia, the legal fiction of Ex Parte Young, and the regular and systemic contacts between defendants Inslee and Foster (and their agents) and the federal government in Washington D.C. contacts that were all purposefully directed at the goal of improper commandeering of the implementation of State sponsored legalized recreational marijuana. These include a history of continuous and systematic communications on marijuana policy from November of 2012 through the present day, the maintenance of an office of the Governor of the State of Washington in Washington D.C. less than 6 blocks from the District Court, an office which participated in and facilitated the systemic series of communications on an almost daily basis, correspondence between defendant Inslee and Holder, as well as the actual physical presence of defendant Inslee in Washington D. C. to conduct negotiations with defendant Holder over marijuana policy on January 23, 2013, and the nationally publicized telephone call and Cole Memorandum of August 29, 2013.

2.4 Defendant Inslee, by acting personally in the forum, by his permanent office in the forum that regularly and systematically engaged in scores, if not hundreds, of communications concerning marijuana policy, and by his own regular and systemic contacts with the federal government in the forum, has maintained a regular and systematic series of contacts with the federal government in Washington D.C. and solicited and effected permanent relationships through which it is very plausible that unconstitutional coercive commandeering directives have been issued and accepted. The extent of this activity strongly favors this Court's jurisdiction.

2.5 This regular and systematic series of contacts and purposeful availments involved not only the January 22-24, 2014 trip of Governor Inslee to Washington D.C. to meet with defendant Holder, but also included a continuing series of actions through the Washington D.C. office of defendant Inslee located at 444, and the placing of "marijuana decision packages" on the desks of defendant Holder and President Obama. (see exhibit I) The January 17, 2013 communication demonstrating the existence of these marijuana decision packages and their transmission to the Attorney General and the President of the United States were only obtained by plaintiff after

filing suit under the Washington State Public Records Act, and many long months of litigation, as the redacted copy of the same record originally disclosed demonstrates. (see exhibit II)

2.6 The systemic and regular contacts between defendant Holder (and to a lesser extent Foster) as a representative of the Executive Branch of the State of Washington and the D.C. forum were purposefully directed at some of the most prominent residents of the District of Columbia, (United States President Barack Obama and United States Attorney General Eric Holder) and also involved the exchange of numerous communications and correspondence including the letters of February 12 (attached as exhibits III) between defendant Inslee and the forum of the District of Columbia, and the August 29 telephone call from defendant Holder in Washington D.C. to Inslee that accompanied the commandeering commandments of the Cole memorandum.

2.7 The defendants' actions and their interconnected actions result from a common nucleus of operative facts, a series of purposeful contacts by the State of Washington and defendants Inslee and Foster with the D. C. forum resulting in the syncretic pastiche of the bipartite federal portmanteau determination authorizing State legalization and coercive "Guidance" memo of August 29, 2014. These interconnected major federal actions have had the effect of commandeering state officers and entities and federalizing of the Washington State commercial recreational marijuana taxation and regulation program, posing a reasonably foreseeable potential for significant adverse impacts to both the environment and the fundamental structure of federalism that is essential to the preservation of liberty and freedom in our federal republic.

III. PARTIES

3.1 Plaintiff West is a citizen and a member of that discreet and suspect class of persons holding medical marijuana authorizations in the State of Washington. He is employed as an independent consultant in the field of nonprofit state medical marijuana authorization. He also frequents and enjoys the urban environment[1], including Parks in the Cities of Seattle and Olympia, particularly Sylvester Park in downtown Olympia, a park suffering under the impacts of homelessness and casual recreational drug use. Plaintiff was a board member of, and the

[1] The Act (NEPA) must be construed to include protection of the quality of life for city residents. Noise, traffic,

Awestaa@Gmail.com
ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

largest single contributor to, the No On I-502 Committee, and has been required to spend time, money and his (limited) expertise lobbying to oppose the enactment of ill-considered legislation resulting from impermissible federal commandeering of the State Legislative and Executive branches and a secret workgroup acting behind closed doors to effectuate a policy of unlawful federal intrusion and commandeering. Plaintiff has a demonstrated judicially recognized connection to the urban and natural environment and will be specifically and materially impacted by the direct and proximate effects of the interrelated federal and State action in this case stemming from a common nucleus of operative facts. Plaintiff has standing to maintain this action.

3.2 Defendant Eric Holder is the United States Attorney and CEO of the Department of Justice, a federal agency subject to the requirements of NEPA, the Constitution of the United States, including the Supremacy and Guarantee Clauses, and the Anti-Commandeering Doctrine established by the Supreme Court.

3.3 Defendant James Cole is a United States Attorney, an agent of his principals Holder and the Department of Justice, and a federal officer.

3.4 Defendant Department of Justice is a federal agency subject to the requirements of NEPA, the Constitution of the United States, including the Supremacy and Guarantee clauses, and the Anti-Commandeering Doctrine established by the Supreme Court.

3.5 Defendant Inslee is the governor of the State of Washington who has purposefully traveled to Washington D.C. and met with defendant Holder to avail himself of the benefits of the D.C. forum in connection with a series of regular and systemic contacts with the forum jurisdiction concerning implementation of State marijuana policy, and who is implementing a commandeered and federalized State program to tax and regulate recreational marijuana. In essence, defendant Inslee and the institutions of the State of Washington have been "dragooned" into the service of the federal government and reduced to the status of puppets of a ventriloquist federal authority, dancing, (along with the State Executive and Legislature) as marionetts on the 8 coercive fingers of the commandeering Cole Memorandum.

3.6 Defendant Foster is the chairperson of the Washington State Liquor Control Board, an agency implementing a federalized recreational marijuana program in violation of the Sunshine Laws and without adequate environmental review under State and federal Law. Foster and her agents of the Liquor Control Board have met with federal officials, and have, through

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

Board member Chis Marr, Executive Director Rick Garza, and through the ESSB 5034 Workgroup, maintained a series of systematic and regular contacts with both defendant Inslee and the District of Columbia forum and federal officials commandeering the activities of the Liquor Control Board in regulation of legal commercialized recreational marijuana in Washington State. Foster is an agent of defendant Inslee, the chief executive officer of the State of Washington. Both Foster and Inslee directly command law enforcement agencies, the Liquor Control Board and State Patrol, respectively. In addition defendant Inslee is charged under the State Constitution with ensuring that the laws are properly enforced.

3.7 It is reasonable and proper for this case to be adjudicated in the D.C. Circuit, and the following factors strongly militate for this conclusion: A. The extensive and purposeful interjection of the defendants into the D.C. forum. B. There is no undue burden on the defendants in defending in the District of Columbia, six blocks from their office, when their Washington office is 30 miles from the District Court in Tacoma, and federal civil procedure is largely electronic and does not usually involve substantial amounts of personal appearances or direct witness testimony. C. There is no conflict with the sovereignty of the defendants' State, as this is what this suit seeks to uphold. D. The forum State's subjective interest in the transient political expedience of commandeering is outweighed by national federalist interests in an unbiased determination in the D.C. circuit, E. The most efficient resolution of the controversy will be had in the D.C. Circuit. F. The D.C. Circuit is essential to the plaintiff's interest in obtaining convenient, complete, and effective relief. G. No alternate forum exists where the plaintiff can obtain a fair and complete hearing, as the 9th Circuit does not recognize pendent party jurisdiction and the Washington State Federal District Court is, by the defendants own representations, a forum non conveniens insofar as the plaintiff is concerned.

IV. ALLEGATIONS

4.1 This case involves a failure to consider reasonably foreseeable potentially significant adverse impacts upon the natural and urban environment and adverse expressive and substantial harm to the system of federalism likely to result from decisions resulting from and fostering a regular and systematic series of communications between the federal government and defendant Inslee (on behalf of the State of Washington), and defendant Foster (for the Liquor Control Board) These underlying decisions were made in response to "Marijuana Decision Packages"

placed on the desks of defendant Holder and President Obama, and announced on August 29, 2013 in a telephone call from defendant Holder to the Governors of Washington and Colorado in association with the coercive and commandeering Cole Memorandum.

4.2 On August 29, 2013, United States Attorney General Eric Holder, by means of a telephone call of unknown specific content, authorized the legal recreational schemes of Colorado and Washington. The same day, a "guidance" memorandum was issued by James Cole of the Department of Justice, which contained 8 directives. The August 29 Cole Memorandum and the August 29 telephone call were interconnected actions stemming from a major federal action (or related actions) as defined in NEPA. They were also the most visible outward manifestation of a systematic and regular series of commandeering communications between federal officials in Washington D.C. and the "State" defendants resulting from "decisions" made without public process in response to "marijuana decision packages" placed on the desks of defendant Holder and Barack Obama at the behest of defendants Inslee and Foster.

4.3 These "decision(s)" issued in response to a systematic series of contacts and "marijuana decision packages" provided to the federal government by defendant Inslee. The "decision" (or decisions) represented by this expressive activity constitutes a Major Federal Action with reasonably foreseeable significant adverse impacts subject to NEPA. (See 40 CFR 1508.18)

4.4 The Holder determination and the August 29 Memo portmanteau are either not properly subject to, and do not meet the definition of a categorically Excluded Action as defined in the CFR, or exceptional circumstances exist making a CE improper under the CEQ regulations. (See, generally, West v. Secretary of Transportation, 206 F.3d 920, (9th Circuit, 2000)

4.5 The federal authorization of the legalized commercial recreational marijuana regulation schemes of the States represented by the determination of defendant Attorney General Holder of August 29, 2013 and the AAG Cole Memo of August 29, 2013 exhibits all of the badges and earmarks of a textbook case of impermissible federal commandeering in violation of the 10th Amendment and the Guarantee Clause.

4.6 The decisions made by the federal government were the result of a systematic and regular series of related communications between the federal government located in Washington D.C. defendant Inslee and Foster, many through agents such as Sam Ricketts and John Lane

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

(Inslee) and Chris Marr and Rick Garza (Foster). These include a January 22, 2013 meeting in Washington D.C between Inslee and Holder to discuss marijuana and I-502 implementation policy, a February 12, 2013 letter from Governor Inslee to Eric Holder, and a telephone call of August 29, 2014 from defendant Holder to Inslee.

4.7 Governor Inslee, through his agent Sam Ricketts located in the Washington State Governor's permanent office in the District of Columbia located at 444 North Capitol Street maintained a systematic and regular pattern of communications with the federal government concerning marijuana policy and the implementation of I-502 in Washington. Attached to this Complaint are true and correct copies of nearly a hundred communications to and from the Governor's D.C. office concerning marijuana policy, released by the office of the Governor of the State of Washington in response to the service of a suit upon them for violation of the Public Records Act.

4.8 Mr. Ricketts, on behalf of his principal, Governor Inslee, maintained a series of regular and systematic communications with the staff of the Governor's office in Washington State, the Liquor Control Board administered by defendant Foster, as well as various Senators and representatives including the Honorable Adam Smith, Richard Blumenthal and Patty Murray. These communications were concerned primarily with marijuana policy and the implementation of I-502.

4.9 Defendant Inslee, through his agent Sam Ricketts of his permanent office in the D.C. forum, located less than six blocks from the D.C. District Court, was the principal to scores of systematic and related communications, all pertaining to marijuana policy and/or the implementation of I-502 by the State Liquor Control Board. Defendant Foster, as a principal, through her agents Marr and Garza, also participated in this series of communications.

4.10 The "decisions" resulting from consideration of the "marijuana decision packages", by defendant Holder and Barack Obama include the Holder determination and the August 29 Memo and have produced and will produce major and significant impacts: in socioeconomic conditions, State statutes, traffic patterns, urban drug use, access to medical cannabis, public health, administration of federally funded health care, federally regulated banking, and will have significant environmental, socioeconomic, and local and regional cumulative and secondary impacts. These impacts include potential adverse impacts to the environment and threatened and endangered species including the newly listed Mazama Pocket Gopher.

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

4.11 Further, the commandeering nature of these policy determinations and their coercive effect on State government have adversely, expressively, and substantially impacted not only the federalist structure of our republican form of government, but also plaintiff's interests as a medical marijuana patient, a consultant in the medical marijuana authorization field, and as a sovereign citizen of the State of Washington, which under the federalist system must be recognized and treated as more than just a territorially based department of an omnipotent central authority.

4.12 The determination to commandeer rather than do nothing or preempt is also objectionable in that legalization of recreational marijuana by the States has been preempted by the federal Congress in the enactment of the CSA. 21 U. S. C. 841 states, in pertinent part, under the heading "Prohibited Acts"...

> (a) Unlawful acts
> Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;...

4.13 Nowhere in the CSA is there discretionary authority for the Department of Justice to authorize or condone broad State violations of the Act as it applies to the general public, or any conditions similar to those contained in the Cole Memo authorizing the Department to employ or impose selectively upon the several states any conditions in regard to enforcement or non-enforcement of the Act.

4.14 The Congressional findings in 21 USC §§ 801(7), 801a(2), and 801a(3) state that a major purpose of the CSA is to "enable the United States to meet all of its obligations" under international treaties. The Holder determination and Cole memo have far reaching international impacts on trade and international treaties, making compliance with the tripartite treaties steming from the Single Convention on Narcotic Drugs of 1961 problematic, and drawing complaints from the U.N. International Narcotics Control Board. None of these impacts have been assessed in any appropriate NEPA determination.

4.15 The defendants, by authorizing and conditioning State legalization on unpublicized conditions announced in a telephone call, and 8 coercive written conditions, and by altering the federal scheme of enforcement of schedule I drugs under the Controlled Substances Act, have commandeered the Washington State legislative and executive departments, expressed an

Awestaa@Gmail.com
ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

attitude and power relation demeaning to the dignity of the States and subversive of the structure and goals of federalism, federalized[2] the State recreational legalization programs for marijuana, and imposed conditions making enforcement of the CSA vague and overbroad in violation of substantive due process and the Due Process Clause of the 4th Amendment. They also violated NEPA by taking a major federal action with reasonably foreseeable significant adverse impacts without compliance with any form of NEPA procedure or even a reviewable administrative record.

4.16 The coercive and commandeering Cole Memo states, in pertinent part...

> The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities...
>
> If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself

4.17 As but one example of the unconstitutional effects of the determination and memo at issue in this case, and the federal intrusion into State rights, SB 5955 was recently proposed by State Senators Hasegawa, Chase, Keiser, Conway, Frockt, Kline, and Kohl-Welles as

> AN ACT Relating to establishing the Washington publicly owned trust in order to create a financing infrastructure to implement Initiative Measure No. 502 that complies with the United States attorney general's guidance letter of August 29, 2013,...

---

[2] See **NEPA and Environmental Planning: Tools, Techniques, and Approaches for Practitioners, Charles H. Eccleston, CRC Press, Dec 12, 2010, at Section 6.5.3.**

Awestaa@Gmail.com
ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

4.18 In the hearings before the legislature on both SB 5887 and HB 2149 the sponsors made explicit reference to the "commandments" and "mandate" of the August 29, 2013 Cole Memorandum, acknowledging their understanding of the commandeering effect of the defendant's actions complained of in this case.

4.19 The Bill reports of Senate Bill 5887 and House Bill 2149 both contain references to the Cole memorandum, and a workgroup was convened by the legislature and executive branches for the purpose of implementing the improper commandeering commandments of the defendants.

4.20 The actions of the ESSB 5034 workgroup and the recommendations that were incorporated into HB 2149 were an outgrowth of the improper commandeering directives of the federal government, and the recommendations and communications of the workgroup demonstrate the coercive reach of the Cole commandments. As the **Governor's Alert-Confidential** of October 21, 2013 states in regard to the workgroup's recommendations...

> The August 29, 2013 Department of Justice memo stated that the federal government expects States to have strong regulatory and enforcement systems in place.

4.21 The level of federal commandeering control of the legislative and executive machinery of State government effected by the composite Cole-Holder imperative transcends the boundaries of acceptable federal behavior and expresses impermissible disdain for the dignity of the states and the basic etiquette of federal and state comity, and has the potential to undermine the very structure of federalism. The Department of Justice, by heeding the siren call of transient political expedience, has in effect removed the grievous bonds[3] required by the Constitution to constrain federal power and run aground on the flowery meadow of improper federal commandeering.

4.22 Defendants have taken final action in approving State recreational marijuana legalization schemes and subjecting them to coercive federal conditions and requirements

[3] See, eg, **Ulysses Unbound,** Studies in Rationality, Precommitment, and Constraints, Jon Elster, 2000

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

enumerated in the Holder determination and the Cole Memo. As the decision underlying the Cole memo was made without public procedure, and announced orally by means of a telephone call, it is improbable that an adequate administrative record of the basis for the determination exists, rendering it an unconstitutional example of arbitrary and capricious administrative action.

4.23 The Holder determination and the Cole Memo portmanteau effect a significant reallocation of federal resources and a major alteration in federal drug policy implemented by the DEA, DOJ, FBI, and IRS. They also grant citizens in two states privileges not enjoyed by those in the several states in violation of Article IV, sections 2(1) and 4(1) of the Constitution of the United States and the 10th Amendment principle of Equal Sovereignty.

4.24 The Holder determination and the Cole Memo, significantly altered the status quo resulting from the previous DOJ letter of April 14, 2001, and, as applied in a reasonably foreseeable manner, have, according to US Attorney Jennifer Durkan, made medical marijuana "untenable" in the State of Washington.

4.25 The reasonably foreseeable and imminent effect of I-502 and the Cole/Holder determinations will be to make medical patients' (and plaintiff's) access to cannabis difficult or non-existent and more expensive.

4.26 Acting in accord with the Holder/Cole determinations, many Cities and Counties, including the City of Olympia where plaintiff resides, have implemented 502 based moratoriums or bans on medical marijuana and collective gardens. The I-502 based City of Olympia ban directly and adversely impacts plaintiff West.

4.27 Under the I-502 scheme approved, authorized and conditioned by the defendants' major federal action, State revenue and taxation will be based on violation of federal banking laws and unlawful self-incrimination in violation of Leary v. United States, 395 U.S. 6 (1969)

4.28 Plaintiff will be faced with incriminating himself as a suspect class to buy marijuana at a 502 store, or may be subject to a proposed State based "registry" with similar unconstitutional defects as advanced in conformity with defendants' commandeering activities. He will also be faced with a deteriorating urban environment and impacts from unfettered casual drug use stemming from the defendants' actions.

4.29 The flawed tax scheme of I-502 and the vague federal enforcement evident in the Holder/Cole determinations will combine to encourage and financially benefit the black market further impacting the urban environment.

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

4.30 The conditions in the Holder authorization and the Cole Memo violate the delegation doctrine and substantive due process in that they lack adequate standards to inform potential violators, guide administrative action, or prevent arbitrary and capricious enforcement.

4.31 The conditions of the Holder authorization and the Cole Memo are unconstitutional, and violate the 4th, 5th, 9th, 10th and 14th Amendments, the Guarantee clause, the Anti-commandeering Doctrine (See *New York v. United States*, 505 U.S. 144 (1992)) and the Citizens' voting rights in that they compel enforcement adoption of State laws and regulations, compel the adoption of "robust enforcement measures" by the Washington State legislature, and impose conditions on the application of a State Initiative exercised by the people at variance with those they voted for.

4.32 Plaintiff has been directly impacted by the conditions imposed on the State of Washington by the Holder determination and the Cole Memo in violation of the 9th, 10th and 14th Amendments, and the many and varied executive and legislative acts that have been taken or proposed to be necessary to comply with this federal overreaching.

4.33 Plaintiff has attended numerous legislative hearings and opposed numerous legislative acts proposed as necessary to comply with the arbitrary and capricious edicts of Holder and Cole that grossly transcend the 9th, 10th and 14th Amendments.

4.34 On January 21, 3013, plaintiff was present when the Cole Memo was referred to as a "Federal Mandate" by a proponent of a Bill to sharply regulate medical marijuana in Washington State (HB 2149) before the Senate Committee on Health Care.

4.35 Plaintiff has been directly impacted by the State's imposition of taxes on medical providers pursuant to the "authority" of the Holder determination and the Cole Memorandum, and by the State's participation in a State run monopoly and taxation scheme in violation of the proscriptions of self incrimination in Leary v. United States and the Sherman Antitrust Act.

4.36 As a patient plaintiff has been impacted by the federalization of Washington's recreational marijuana "legalization" as well as reliance on the Cole Memo and the Holder action which have been employed as a basis to justify a vast range of actions, from altering the State and federal banking system to U. S. Attorney Jennifer Durkan's declaration that medical marijuana system is "untenable" and to the conclusion by Washington lawmakers that medical marijuana must be merged with I-502 recreational stores and that patients must be subject to the

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

same conditions and taxes as recreational users in order to comply with the "commandments" of the Cole Memorandum.

4.37 The actions of defendant Holder in making a major federal decision behind closed doors and without a public process for consultation with other concerned federal agencies such as the DEA, FBI, EPA, and ATF, and other required NEPA procedures have directly encouraged and/or precipitated a similar pattern of clandestine decision making by the State of Washington in violation of the Public Records Act, the Open Public Meetings Act, and SEPA, and in the absence of a joint SEPA-NEPA determination.

4.38 Plaintiff has commented on, and participated in the State SEPA process, and has been compelled to testify at numerous legislative hearings to oppose changes to medical marijuana and other State laws directly stemming from the Holder decision and the coercive federalizing conditions of the Cole Memo.

4.39 Plaintiff has particularized informational standing (See West v. Department of Transportation) due to the withholding of records and violations of the Open Public Meetings Act demonstrated by the Liquor Control Board and the ESSB 5034 141(2) Workgroup. On January 17, 2014 ruling of the State Superior Court awarded plaintiff $2,200 in penalties for the withholding of public records related to the implementation of I-502 by the Washington State Liquor Control Board. In addition to these violations the Board has certified that they committed over a dozen violations of the Open Public Meetings Act in drafting rules for I-502, by holding secret meetings with law enforcement, cities, and drug prevention groups.

4.40 Plaintiff travels widely within the State of Washington, for professional, leisure, recreation, and entertainment purposes. He has a recognized federal bird watching interest, and a connection to the animals and plants in the environment.

4.41 The federally sanctioned implementation of I-502 has impacted the safety of travel as well as his esthetic and recreational enjoyment of parks and other areas of the urban environment including Sylvester Park in Downtown Olympia, which have and will be further degraded by the increase of recreational drug use due to I-502. Increases in crime, traffic, noise, air pollution, and cumulative impacts will also result from an entirely new commercial market concentrated in a few cities and counties. He also has procedural standing to require a proper consideration of environmental, social, and economic factors before the federalized scheme of regulation is implemented.

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

4.42 No adequate assessment of the impacts of large-scale cultivation and the use of the 18 pesticides approved under I-502 has been made on human health, endangered and protected species or air and water quality. No assessment of the impacts of large-scale cultivation on water supplies in Eastern or Western Washington has been made, and no projections on the impact on salmon due to this reasonably foreseeable new water use exist.

4.43 No assessment of the impacts to the security of our economic system or federally regulated banking system of millions or potentially billions of dollars in drug profits being collected and spent, ether in cash or electronically, by State governments has been conducted.

4.44 The actions of the defendants in applying the CSA to vest them with discretion where none is present in the intent of Congress, and in using the CSA to coerce State action rendered the CSA, as applied, an unconstitutional delegation of legislative authority, and a violation of the 4th, 5th, 9th, 10th, and 14th Amendments.

4.45 The action of the defendants in approving a system of regulation and taxation based upon the registry and identification of inherently suspect classes violates the 5th Amendment right to be free from self-incrimination and the precedent of Leary v. United States.

4.46 The action of the defendants approved a system where the public will be exposed to 22 pesticides allowed under the I-502 rules without any provisions for testing or adequate studies on how the oxidation and heating of these substances may impact human health.

4.47 The actions of defendant Inslee in seeking federal approval and accepting federal conditions upon State administration of I-502 federalized the State marijuana program, and require a joint NEPA-SEPA determination.

4.48 Defendant Sharon Foster is the CEO of the Washington State Liquor Control Board. By acting to regulate and tax a controlled substance pursuant to federal authorization and conditions imposed by the Holder/Cole determinations, Foster has federalized the State I-502 implementation process and violated NEPA by failing to prepare a joint NEPA-SEPA document.

4.49 By seeking to severely curtail or eliminate medical marijuana as part of the I-502 implementation process, and through a clandestine work group, defendants Foster and Inslee have violated the doctrine of separation of powers and have acted pursuant to federal direction and control to significantly impact medical marijuana patients' access to medicine.

4.50 By approving the use of pesticides on marijuana, without adequate safeguards or testing, defendants Inslee and Foster have created a danger to human health and the environment.

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

4.51 The defendant's actions in approving the commercial production of, and pesticide use on, an entirely new commodity without appropriate NEPA or NEPA-SEPA review failed to consider impacts to threatened and endangered species, including the newly listed Mazama (or Western) Pocket Gopher, a creature who, like the other plants and animals in the natural environment plaintiff West has a connection to and whose habitat he has worked to protect for over a decade.

4.52 In its cases, the Supreme Court has stressed that maintaining clear lines of political accountability is the touchstone of the anti-commandeering doctrine. Although commandeering can be a way for Congress to save a few federal dollars, it does not matter whether the States must actually "absorb the costs of implementing a federal program." Printz, 521 U.S. at 930. Nor is the importance of the federal program, New York, 505 U.S. at 178, or a State's consent, id. at 182, relevant. Concerns about misplaced political blame were not simply an afterthought. Op. at 63, 86 n.15. Rather, the critical question is whether the federal government has put States "in the position of taking the blame for [the federal program's burdensomeness and for its defects." Printz, 521 U.S. at 930.

4.53 Federal mandates that condition State action—particularly ones such as the Cole Memorandum restricting or conditioning this State's ability to regulate and issue licenses—result in precisely the sort of misplaced blame that the anti-commandeering doctrine aims to prevent.

4.54 Significantly, under the Holder determination and the Cole Memorandum, the federal government's ability to shift blame on drug policy strikes at the core of American life for which the federal government would very likely want to avoid responsibility. Just as in Printz, it will be the State and "not some federal official" who is blamed for the marijuana policy implemented by State lawmakers under the Cole directives. See 521 U.S. at 930. This raises significant concerns in regard to political accountability.

4.55 Instead of directly regulating or banning marijuana sales, the Attorney General has passed the responsibility to the state of Washington and subjected it to a coercive set of restrictions. Accordingly, when Washington State passes laws or makes regulatory determinations pursuant to the federal "Mandate" of the Cole memorandum, its citizens will understandably blame state officials even though state regulation of recreational marijuana has become an instrument of the federal government.

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

4.56 This human propensity to "shoot the messenger" has long been recognized. Sophocles wrote in Antigone that "[n]o one likes the bringer of bad news." Sophocles, Antigone (c. 441 B.C.), reprinted in Sophocles: The Complete Plays 352 (Paul Roche transl., Signet Classics 2001). Shakespeare wrote in Antony and Cleopatra that "[t]he nature of bad news infects the teller." William Shakespeare, Antony and Cleopatra (c. 1606), reprinted in The Unabridged William Shakespeare 1135 (William George Clark & William Aldis Wright eds. 1989).

4.57 By blurring the lines of accountability the Holder determination and the 8 directives of the Cole Memorandum not only violate the anti-commandeering doctrine and place federal regulatory duties upon the State, but provoke citizens to blame State regulators for the application of what is in essence federal policy, producing substantive injury in addition to the expressive insult to the dignity of the State of Washington as a co-equal sovereign in a democratic federalist Republic.

V. NEPA-APA CLAIM

5.1 By taking a Major Federal Action as defined in 40 CFR 1508, and issuing federal approval and coercive regulatory conditions for State legalization of commercial recreational marijuana in the absence of compliance with NEPA and SEPA in the form of a NEPA or Joint NEPA-SEPA EIS, EA, FONSI, or CE, and by failing to consult with the DEA, FBI, EPA, and ATF, the State and Federal defendants violated the National Environmental Policy Act for which relief is appropriate by means of review under the Administrative Procedures Act.

VI 10th AMENDMENT–GUARANTEE CLAUSE ANTI-COMMANDEERING DOCTRINE CLAIM

6.1 By engaging in a regular and systemic series of related communications with and actions in the District of Columbia, and issuing and applying coercive federal approval and regulatory conditions for State legalization and commercialization of recreational marijuana in violation of the Supremacy and Guarantee Clauses, as well as the 9th, 10th and 14th Amendments, the State and Federal defendants acted unlawfully and violated the Anti-commandeering Doctrine in an unconstitutional manner, precipitating both substantive and expressive harm to the structure of federalism and the dignity due a joint sovereign, for which relief is appropriate under the 10th Amendment, the Guarantee Clause and the Anti-commandeering Doctrine.

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

VII. DECLARATORY JUDGMENTS ACT CLAIM

7.1 By issuing coercive federal approval and regulatory conditions for State legalization of recreational marijuana in violation of the 4th, 5th, 9th, 10th and 11th Amendments and in the absence of compliance with NEPA in the form of a NEPA or Joint NEPA-SEPA EIS, EA, or FONSI, and in improperly delegating or accepting regulatory authority under the controlled substances act, the State and Federal defendants acted unlawfully and violated the National Environmental Policy Act and applied the CSA and I-502 in an unlawful and unconstitutional manner, creating a case and controversy for which relief is appropriate under the Federal Declaratory Judgments Act.

VIII. AS APPLIED CONSTITUTIONAL CLAIMS

8.1 By using the Controlled Substances Act as an excuse to impose coercive federal approval and regulatory conditions for State legalization of commercialized recreational marijuana in violation of the 9th, 10th and 11th Amendments, in attempting to terminate patients access to medicine, in requiring self incrimination in violation of the 5th Amendment as part of a taxation and regulatory scheme, and in the absence of compliance with NEPA, and in improperly delegating or accepting discretionary regulatory authority under the controlled substances act where none was intended by Congress, in a vague and overbroad manner violative of the 4th Amendment, the State and Federal defendants acted unlawfully and applied The CSA and I-502 in an unconstitutional manner, for which relief is appropriate.

VIII. REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

8.1 That the State and Federal defendants be compelled to comply with the requirements of NEPA in regard to making the appropriate federal decision(s) and response concerning Washington State's legalization regulation and taxation of recreational marijuana, and conduct an assessment of appropriate social, economic, and environmental impacts of Washington State's legalization of recreational marijuana as a whole, in a NEPA or a joint NEPA-SEPA document, and that mitigation measures be considered to reduce resulting impacts upon the federally regulated banking system, the economy, medical marijuana patients, the urban environment,

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

protected and endangered species, and air and water quality, and that adequate safeguards be employed to prevent a danger to public health and the environment from unregulated application of pesticides to a new commodity that is oxidized and heated prior to consumption.

8.2 That a Declaratory Judgment issue declaring that the defendants' actions and the connected actions resulting from the federal determination(s) authorizing State legalization and the coercive August 29 "Guidance" memo have had the effect of commandeering state officers and entities and federalizing of the State marijuana regulation program, and rising to the level of substantial and expressive harm to the structure of federalism in violation of the 9th and 10th Amendments and the common law doctrine of Anti-Commandeering Doctrine.

8.3 That the Court declare that the defendants must, in the field of commercial recreational marijuana policy, act in a manner to afford the State of Washington its structural autonomy and independence, the constitutionally underwritten dignity appropriate to a sovereign state, the esteem which it is due as a sovereign entity, the essential attributes inhering in the State's constitutional status, and the requirement that the state of Washington be treated in a manner consistent with its status as residual sovereign and joint participant in the governance of the nation, and as an equal sovereign state, as required by the history, practice, precedent, the structure of the Constitution, and the Anti-commandeering Doctrine

8.4 That a Declaratory Judgment issue declaring the August 29 authorization determination of defendant Holder and the August 29 Cole Memo void, and annulling the improper delegation of authority under the controlled substances act, and any authorization or imposition of conditions or acts in furtherance of said conditions in violation of NEPA or the 4th, 5th, 9th, 10th or 14th Amendments, including those actions taken by defendants Inslee and Foster on behalf of the State of Washington.

8.5 That the Court order that such relief issue as may be necessary by injunction or otherwise, to protect the status quo pending the ultimate determination of this case.

8.6 That plaintiff recover his costs and fees.

I, Arthur West, certify the foregoing to be correct and true under penalty of perjury of the laws of the United States and the State of Washington.

Dated this 10st day of April, 2014, in Olympia.

S/Arthur West
Arthur West

Awestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, May 12, 2014 8:37 AM
To: 'Arthur West'; Turcott, Bruce (ATG); Gonick, Peter (ATG)
Subject: RE: 88759-4

Rec'd 5-12-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Arthur West [mailto:awestaa@gmail.com]
Sent: Monday, May 12, 2014 8:17 AM
To: OFFICE RECEPTIONIST, CLERK; Turcott, Bruce (ATG); Gonick, Peter (ATG)
Subject: 88759-4